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LETTER

FROM

EDWARD LIVINGSTON, Esq.

TO

ROBERTS VAUX,

ON THE

ADVANTAGES

OF THE

Pennsylvania System

OF

PRISON DISCIPLINE,

FOR THE

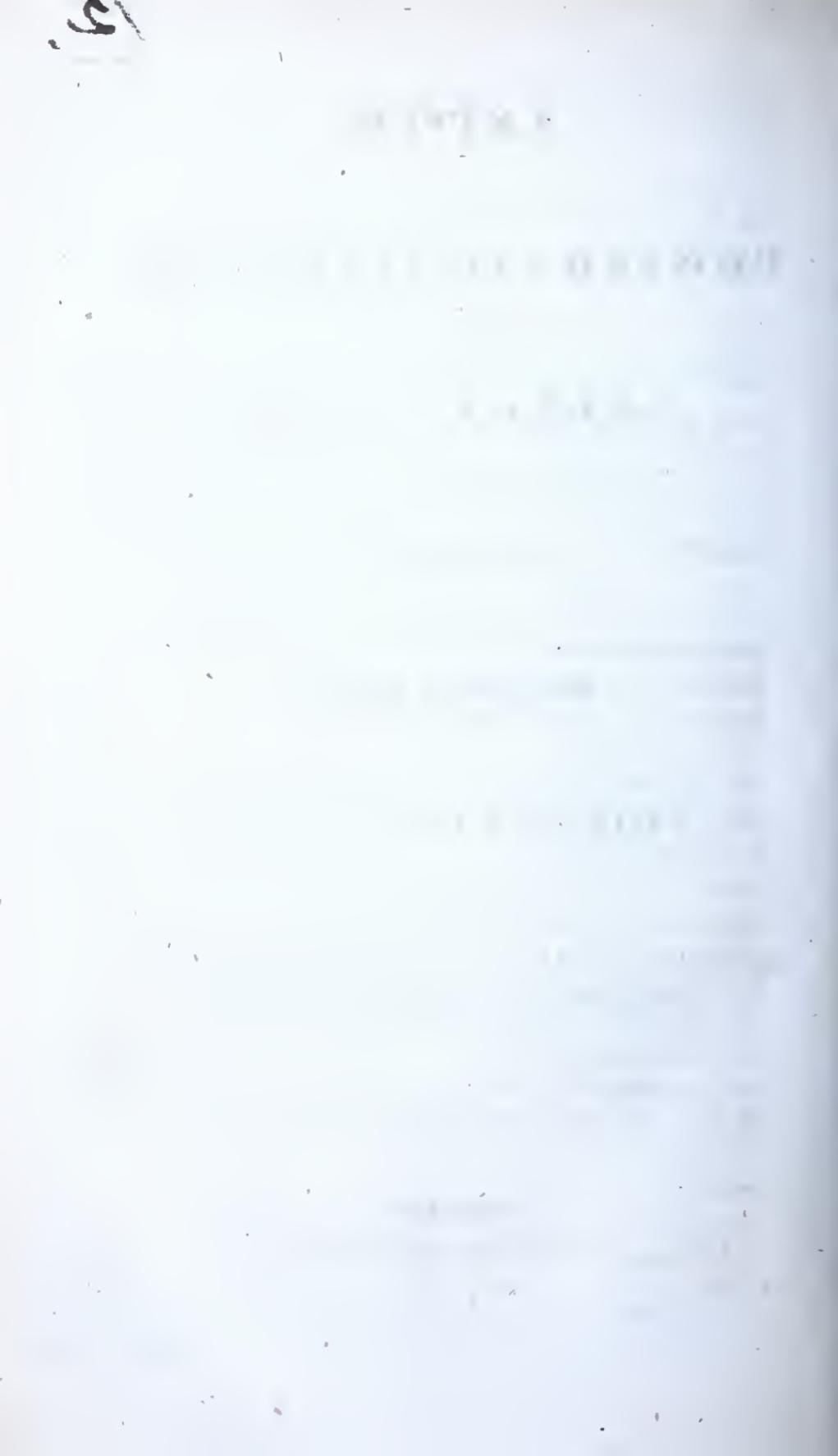
*Application of which the new Penitentiary has been
constructed near Philadelphia, &c. &c.*



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1828



P R E F A C E .

[*The following Letter was originally published in the National Gazette of Philadelphia, and is thus introduced by the independent and erudite editor of that paper.*]

WE are anxious that attention should be attracted to the very interesting and cogent letter of Edward Livingston, Esq. which is contained in our first page. It relates to a subject of public economy, that deeply concerns our whole commonwealth, and indeed, the civilized world at large. Mr. Livingston has, for several years, employed his acute and enlightened mind in investigating Penal Jurisprudence and Prison Discipline; and, we presume, from this circumstance, and the character of his publications, that no individual in our country is more intimately acquainted with them, and, of course, no one more competent to advise or decide upon the points, of which the discussion immediately affects the people of Pennsylvania, and upon which her Legislature will soon have occasion to act. The task which Mr. Livingston performed for Louisiana in the preparation of her penal code, involved extensive research into this whole branch of jurisprudence. We have reason to believe, that whatever materials for judgment, speculative or practical, could be commanded, either at home or abroad, were diligently sought and indefatigably applied. His opinions, therefore, ought to receive earnest consideration, and all

the deference due to the authority of knowledge, accompanied by discernment and vivified by the spirit of benevolence and patriotism.

Pennsylvania is opportunely reminded, in his letter to our philanthropic townsman, of her original measures for the treatment and *reform* of criminals; and it is reasonable to suppose that she will feel pride in perfecting, or prosecuting to full and fair trial, a system for which large sums have been already expended in the erection of suitable edifices. Mr. Livingston may well ask—"Would it be wise to abandon this experiment (of the scheme of solitary imprisonment with labour and instruction) at the very moment you have incurred all the expense it required, and overcome all the difficulties which it at first presented?" Not only do many of the States of our Union await the result of the promised trial here, but the attention of European governments has been directed to it. To substitute for the plan thus undertaken and regarded, that of another commonwealth—which is open to the objections so impartially and forcibly urged by Mr. Livingston—before any proof had been furnished of its insufficiency or injuriousness, and when every thing was prepared for carrying it into effect, would savour strongly of improvidence and instability, where the highest motives of public weal and permanent glory call for resolution and perseverance. We hope that the letter of Mr. Livingston will be reprinted in other papers, in order that the people and the legislature may have an opportunity of weighing its doctrine and reasonings by the time that the penitentiary question shall be taken into final consideration at Harrisburgh.

LETTER.

RED HOOK, N. Y., OCTOBER 25, 1828.

You are one of the very few, my good friend, to whom, at this period of general excitement, I could venture to speak with the hope of being listened to, on any other topic than those of the election or the tariff. Whatever may be our opinions and preferences on these subjects, yet there are others which have so much engrossed our thoughts, and interested our feelings, that we have never found time to settle between us the great concerns of the nation, and have conversed more frequently on reforms in penal law and prison discipline, than on those required in the government of the country. Leaving, then, the majority of the people, under the direction of that wise Providence, which speaks through their voice, to determine between the candidates for their favour, let me endeavour, by this letter, to supply some observations I was prevented from offering to you, verbally, by my sudden departure when last in your city.

The substitution of labour as a punishment, instead of death and other bodily sufferings, has, at different periods, entered into the theories of ingenious writers, and in some degree into the practice of certain nations; but I think you have sufficiently shown, that to Pennsylvania, and the wise foresight of its philanthropic founder, we owe the first successful experiment to prove that seclusion and laborious

habits may be made the means a once of punishment, reformation and example. False economy, and a fatal inattention to the principles which produced this success, destroyed its affects almost as soon as they were felt; and in Pennsylvania, as well as in all the states which had followed her example, the system was found to be inefficient in the exact degree in which the seclusion became less strict, and in which the labour was enforced by chains or stripes. The promiscuous association of convicts produced an enormous increase both in the number and atrocity of offences; and it became evident that no reform could be expected, while it was suffered to exist. Classification had been tried in England, and partially here, but it was found to be an incomplete remedy—that system could only be perfected by individual seclusion: because, even when the class was reduced to two, one of them would generally be found qualified to corrupt the other; and if the rare case should occur, of two persons who had arrived at the same precise point of depravity, and the rarer circumstance of the keeper's discernment being successfully employed in associating them, their approximation would increase the common stock of guilt. The conviction of this truth, and the necessity of providing a remedy for the evil, appears to have suggested different plans, all of them in different degrees corrective of the present abuse. The corrupting influence of promiscuous association was found to be the greatest during the night, when unchecked by the presence of keepers, unemployed by labour, every opportunity was offered for confirming old offenders, and initiating the young in the mysteries of vice and crime. An obvious improvement, therefore, was a separate dormitory for each convict. To continue this seclusion during the day, would be expensive, because the accommodations must be enlarged, and the indemnity to be expected from the prisoner's solitary labour would

be less if he were employed, or nothing if he were kept in idleness. Economy here again intervened, and suggested that strict discipline during the day might supply the place of seclusion, prevent corrupting intercourse, and increase the profits of the establishment by forced and social labour. This is the foundation of Mr. Lynds' plan. It has been adopted at Auburn and Sing Sing, and with a partial success, which I much fear may arrest the penitentiary system in its progress to that point of perfection at which all its advocates expect it to arrive.

It may have this effect in two ways—first, by making us content with a partial improvement, and relaxing our endeavours to perfect it; but principally by the error of attributing to the system effects which are only due to the talent by which it is conducted; just as the worst government may be so administered as to produce more prosperity than the best, when the power is placed in bad hands. Compared with the discipline in the prisons of New York, Philadelphia, Baltimore, and, I may add, most of the other penitentiaries in the United States, that of Auburn and Sing Sing is greatly superior; but it does not, and cannot, from the nature of things, ever approach perfection, if we allow reformation to enter into our views, and if we wish to guard against the abuse of authority. The founder of the system did not expect reformation. In a letter, with which he favoured me some time ago, on the subject, he considered it as hopeless: and although, by the late returns, it appears that a portion of the convicts have shown signs of amendment after their discharge, yet they are too few in proportion to the whole number: and the time is too short to give any certainty of the system's producing this effect. Where fifty or sixty convicts, selected for their aptitude for a particular trade or work, not from any fitness of moral feeling; are

associated in the same shop, it is next to an impossibility that one or two keepers should prevent their communication with each other, be those keepers ever so vigilant, even supposing them to be inaccessible to corruption, or to a feeling of compassion inconsistent with duty. Here again I have the authority of Mr. Lynds, who tells me, in substance, that his greatest difficulty was to find keepers who were not apt to err on the side of indulgence. But suppose this difficulty conquered, and the convicts placed under that immediate inspection of task-masters willing to enforce the most rigid discipline—one keeper to every ten would not be sufficient to watch the whispers, the looks, the signs, by which the association of ideas and reminiscences of guilt would be kept up, and plans of new arrangements formed to be executed on their discharge—and were there no other knowledge gained, that of each other's person is a serious objection to this social labour.

It is not extraordinary that this system should have admirers; every visiter must admire the cleanliness, order, laborious exertion, and silence which reign in the shops, and the military parade of the convicts as they march to and from their labour is imposing. But the visiter does not see, nor can the keeper see, at all times, the signs of intelligence, or hear the whispers of communication that are made, and must, from the nature of things, be made, between the most abandoned felons, working for years in the same shop, within a few feet of each other. Strict discipline, we are told, prevents this—those who are detected are instantly punished, and the fear of a new infliction keeps them silent. It will make them cautious; but it must change their nature, not only as malefactors, but as men, if it does not increase their desire of communicating with each other while there is a possibility of doing it un-

observed; and that such a possibility exists it would be vain to deny—not only during the time of labour, when a word addressed to one standing within a few feet could not be heard further than was intended, by reason of the clanking of hammers, and the noise of machinery, but along the line of the lock march, in going to and returning from labour, when the lips of each man are placed within a few inches of the ear of the one who precedes him, a situation infinitely well calculated for passing the word of revolt or establishing conventional signs of intelligence from the rear to the front of the line almost with electrical rapidity. The endeavour to overcome these facilities for communication, although it can never perfectly succeed, must be sustained by placing unlimited power in the hands, not only of the warden, but of every subordinate keeper. Immediate chastisement by the infliction of stripes!—the whole system is based upon this. Every under keeper may beat any convict without any kind of restriction. He has only to suppose an irreverent look, or a sign of intelligence, and it is his duty to apply the whip—there can be no check. He says he saw a sign made by one convict to another; the convict denies having made or intended it, and he is beaten—not only to punish him for having made the sign, but, *until he confesses that he did make it.* This is not only what may happen, but what has happened, and what has received the solemn sanction of a court of justice, as a necessary and legal power to be vested, not in the warden or inspectors, but in the under keepers. Now, will any one say, that this power vested in subordinate hands is not liable to be abused, and, as it is declared to be discretionary, abused with impunity; or that a system which can only be supported by such an investiture of power can be, as it has been termed, a perfect model for imitation? The worst portion of it, in my opinion, is not the facility it gives to

corrupting associations or to arranging plans of escape. In both these particulars it is infinitely superior to any other existing institution of the kind. But it is in this, that it enables the lowest officer of the penitentiary, at his will, to alter the punishment directed by law, to one that the law has discarded as too unequal, and demoralizing, and degrading to be inflicted, and thus to increase the punishment of a slight offence to a degree greater than that designated for one of a deeper dye:—And in this, that a system of labour carried on by stripes is not (for the reasons stated in my introductory report to the code of prison discipline) calculated to produce reformation, which I hold to be a most essential object in any plan of criminal law.

As opposed to this system I have ventured to propose one based upon labour in seclusion; as a relief from seclusion without labour; succeeded gradually by instruction, and labour in classified society; labour not coerced, but granted as a favour; and instruction given as the reward of industry and good conduct, not enforced as a task. You will have seen the details in my code of prison discipline. Whether your opinion and mine agree as to those details I know not, but I am sure we do in the utility of seclusion, accompanied by moral, religious, and scientific instruction, and useful manual labour.

I was myself deceived by supposing that the report of the Committee of the Senate* had been adopted as the groundwork of your penitentiary discipline, and that absolute solitude, without labour, was to be substituted for your present plan. But your verbal explanations have convinced me of my error, and I wonder exceedingly that those in

* This report was made in 1821.

your several instructive publications have not also convinced others, that the design of the new Philadelphia Penitentiary is not to inflict the dreadful punishment of absolute solitude without labour and without instruction.* This has been improperly assumed in all the parallels between the Auburn discipline and that of your state; and discarding (as is very properly done) the discipline of the old penitentiary, the question has been argued as if the consequence of not taking the Auburn plan would be a resort to absolute solitude, as a punishment. If this were the case, I should be inclined to adopt the former with all its inconveniences. But not believing this to be a necessary alternative, I cannot but lament the efforts that are making to induce your legislature to abandon the experiment which your noble building is so well calculated for making with effect. Your state has gone to great expense to solve, by experiment, (the best of all means) the great questions, whether convicts can not, by a judicious treatment, be reformed as well as punished by the same process; whether they may not be made examples to follow in their lives after punishment, as they are examples to avoid in their conduct preceding it. Whether the whip is the most proper instrument to inculcate lessons of religion, morality, industry, and science; and whether a man will love labour the better for having been forced by the infliction or the fear of the lash to perform a certain quantity of it every day? Would it be wise to abandon this experiment at the very moment that you have incurred all the expense it required, and overcome all the difficulties it at first presented? Besides, it seems to me, that if I were a Pennsylvanian, without the fullest con-

* Vide notices of the original and successive efforts to reform the Penal Code and Prison Discipline of Pennsylvania, by Roberts Vaux; also, his Letters to William Roscoe, of Liverpool, concerning the new Penitentiary at Philadelphia.

viction that the plan devised by Penn, and so successfully executed in the state afterwards, was impracticable, I should never consent to abandon it for one founded on directly opposite principles. I should feel some state pride (and surely there can be no better foundation on which to place it) in showing that, as Pennsylvania was the first to propose the system, so she would have the credit of bringing it to perfection. I would not be dazzled by the praise that has been bestowed on the Auburn plan, or debarred by the erroneous view that has been taken of your own; I would closely scrutinize the former, to discover to what part its success is due; I would follow that, but would not copy those parts which diverge from the principles on which all penitentiary punishments ought to be founded. The seclusion by night, which Mr. Lynds introduced, was a great step towards perfection; the indiscriminate association by day was a retrograde movement, the ill effects of which are partially counteracted by the severe discipline of personal chastisement by stripes, a practice more injurious than the evil it purports to correct. I am not, in what I say to you, and have published to the world on this subject, governed by any sickly feeling of compassion for the sufferings of convicts. If I had the powers, and thought them necessary to prevent crime, I could direct punishments as strongly as those who entertain opinions different from mine. But I believe convicts to be men, bad men, it is true, but bad from example, from poverty, from vice, from idleness, from intemperance, from the indulgence of evil passions—that there are not many who, by counteracting these causes, cannot be reclaimed; and that you do more good, and save more expense to the state, and secure the safety of its citizens in a greater degree, by reforming one of them, than by punishing and then releasing ten others. The punishment of these ten acts on their fears, and on those of others, as

an example; but so does the punishment by which you have reformed the one: he will have no inclination to resume his inroads on society; the ten others will recur to theirs upon every occasion on which they flatter themselves that it can be done with impunity; and of all calculations of false economy the greatest is that which considers the cost of reforming a prisoner as a useless expense. Discharging an unreformed thief, is tantamount to authorizing a tax of an unlimited amount to be raised on individuals. Calculate the amount annually lost by theft alone, besides the property destroyed by other offences; and you will find it amounts to a much larger sum than the interest of all those which are required for your reformatory establishments; and this expense is borne by a few unfortunate individuals perhaps the least able to sustain it. Therefore it would be no false estimate (and I hope it is not an irreverent one) to say that the interest and peace of the dwellers upon earth, are promoted by the reformation of convicts in the same degree with the joy which, as we are taught, is felt by the inhabitants of heaven, on the conversion of sinners. The numerous and highly respectable advocates for the Auburn plan, think that its discipline, joined to the many other advantages it is acknowledged to possess, is calculated to produce reformation, and therefore very naturally urge its adoption by the other states; but if I might be permitted to judge, I should say that they urge it with rather too much of the exclusive spirit that belongs to sectarian controversy. That plan has done much. Why should they discourage experiments founded on at least plausible reasons, to do more; and why should they represent the one you are about to try as a system of solitary imprisonment without labour or instruction, which, unless I greatly misunderstand it, is to combine both? But I find I am writing a treatise instead of a letter, the only object of which, when I began it, was to

press upon you earnestly the importance of persevering in the plan of combining solitary imprisonment with instruction and labour (neither of them coerced) as the modes which may most reasonably be expected to produce the end we have in view; and to keep social labour and social instruction in classes, as a reward to stimulate to exertion and improvement.

I have now done, but it is "very stuff of the conscience" with me, never to write or speak on this subject without saying that, whatever partial good you may do by penitentiary punishments, nothing radically important can be effected, unless you "begin (as the fairy tale has it) at the beginning." Force education upon the people, instead of forcing them to labour as a punishment for crimes which the degradation of ignorance has induced them to commit; teach religion and science, and a simple system of penal law, in your primary schools; adopt a system of penal procedure that shall be expeditious, gratuitous, easily understood, and that shall banish all hope of escape from the defects of form, as well as every vexation to the parties or the witnesses. Provide subsistence for the poor who cannot labour, and employment for those who can. But above all do not force those whom you are obliged to imprison before trial, be they innocent or guilty, into that contaminating society from which, after they are found to be guilty, you are so anxious to keep them. Remember, that in Philadelphia, as well as in New York, more than two thousand five hundred are annually committed; of whom not one-fourth are found to be guilty; and that thus you have introduced every year more than 1800 persons, presumed to be innocent, into a school where every vice and every crime is taught by the ablest masters; and we shut our eyes to this enormous evil, and inconsistently go on preaching the ne-

cessity of seclusion and labour, and industry after conviction, as if penitentiaries were the only places in which the contamination of evil society were to be dreaded. Why will not Pennsylvania take the lead in perfecting the work she began; and instead of patchwork legislation, that can never be effectual, establish a complete system, in which all the different, but mutually dependent subjects of education, pauperism, penal law, and prison discipline should be embraced? I am preaching I know to the converted, when I urge the consideration of these subjects upon you: but mutual exhortation is of service even between those who think alike, and there is no cause to the success of which I would more willingly devote my feeble talents, and the exertions of my life, including, as it does, the cause of religion, humanity, and social order, than the one which forms the subject of this letter; there is none, I am sure, more interesting to you, and therefore I will mix with it no other than that of the high esteem with which I am always, my dear sir, your friend and humble servant,

EDW. LIVINGSTON.

ROBERTS VAUX, Esq.

